

FENNEMORE CRAIG

I - Law

INTELLECTUAL PROPERTY LAW ALERT

Fennemore Craig I-Law, a bi-weekly e-mail from Fennemore Craig's Intellectual Property Group, provides an update on e-commerce, Internet, trademark, patent, licensing and copyright news.

Fennemore Craig counsels clients on Internet, branding and e-commerce issues and protection and commercial exploitation of patents, copyrights, trademarks, and trade secrets. Clients include a range of domestic and international businesses from Internet start-ups to large multi-nationals in industries ranging from computer software and hardware to pharmaceuticals, toys, games, optics, and electronics.

If you think other people would benefit from this communiqué, please let them know that they can subscribe by sending an e-mail to Cheryl Martin-DeVries at cdevries@fclaw.com. Back issues of *Fennemore Craig I-Law* can be found at the Issues & Answers section of our web site at www.fennemorecraig.com.

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COPYRIGHTS

- DVD copying software company faces DMCA lawsuit.
http://news.com.com/2100-1026_3-1001586.html?tag=fd_lede2_hed
- Oops. RIAA erroneously sends DMCA cease and desist notice to Penn State's astronomy department. They say they are sorry.
http://news.com.com/2100-1025_3-1001095.html?tag=cd_mh
- A new report says three fourths of file-swappers have purchased music over the Internet or in a store within the past three months.
<http://www.ecommercetimes.com/perl/story/21469.html>
- Remember how people used to bootleg videotapes when the first VCRs came out? Well, that stopped. Why? Because folks like blockbuster made videotapes easily and cheaply available, and people generally don't like to break the law. Well, could the same thing happen with file-swapping music? Maybe. Apple's iTunes experiment (download any song for \$.99) sold 1 million downloads in the first week. Hmm.
<http://www.nandotimes.com/technology/story/878723p-6125929c.html> (free registration required)

ONLINE & E-COMMERCE ISSUES

- Company created pop-up ads that automatically dialed and then connected people's computers to porn sites and then charged large \$\$ to their phone bills. Nine states are suing.
<http://www.reuters.com/newsArticle.jhtml?storyID=2752669>
- No wonder office hours for students are so short. Professors at Cal Poly may continue to view pornography on their computers at work, so long as it doesn't create a hostile work environment.
<http://www.latimes.com/technology/la-me-sexsites15may15,1,4880799.story> *(free registration required)*
- A New York Court sets new limits for e-discovery.
<http://www.law.com/jsp/article.jsp?id=1052440727620>
- Ohio bans Internet and email harassment (if the governor approves).
<http://www.daytondailynews.com/localnews/content/localnews/daily/0514cyber.html>
- What were they thinking? Someone started up a service that charges customers to sign up for the US government's free do-not-call list. Needless to say, the FTC does not look kindly upon this service and has sued to shut it down.
http://news.com.com/2100-1037_3-1000728.html?tag=fd_top
- After a four month investigation, police have decided not to charge famed Who guitarist, Peter Townshend, for downloading and viewing online child pornography.
<http://www.cnn.com/2003/WORLD/europe/05/07/uk.townshend/index.html>
- eBay not liable for seller's negative comments about bidder.
<http://www.reuters.com/newsArticle.jhtml?storyID=2686021>
http://news.com.com/2100-1018_3-999849.html
- Some are questioning the legality of misleading MP3 files like the one Madonna posted on file-swapping websites, which fool users into thinking they are getting legitimate illegal copies when in fact they just get Madonna asking nasty questions. The questioners note that misleading identifying info can constitute a deceptive trade practice.
<http://www.theregister.co.uk/content/55/30559.html>
- Supreme Court holds that fraudulent telemarketer fundraising not protected by First Amendment.
<http://www.nytimes.com/2003/05/05/politics/05CND-CHARITY.html> *(free registration required)*
http://www.latimes.com/news/nationworld/nation/la-050503scotus_wr,1,7292083.story?coll=la%2Dhome%2Dheadlines *(free registration required)*
- This can't be good. 1/3 of banks had computer security breaches in the past year.
<http://www.silicon.com/news/500009-500001/1/4118.html>
- Remember the great new DVD security technology that could be overcome with a black magic marker. Well, now, Java and ".net" software can be hacked using a lamp (yes, the thing with a light bulb) along with physical access to the computer. Hacking technique may work with smart cards, too.
http://news.com.com/2100-1009_3-1001406.html?tag=fd_top
- It's the real thing. Coke suffers internal hack of employee data.
<http://www.ajc.com/business/content/business/coke/0503/14breakin.html>

SPAM

- More on spammers suing anti-spam blacklist sites.
<http://www.wired.com/news/business/0,1367,58812,00.html>
- Spammer creates website for fictitious government agency to scam \$\$. Spammer sued by FTC.
<http://www.washingtonpost.com/wp-dyn/articles/A45588-2003May12.html>
- Fax law does not apply to spam, says a Pennsylvania Superior Court.
http://www.superior.court.state.pa.us/opinions/a03010_03.pdf

- Spam for breakfast.
http://www.boston.com/dailyglobe2/128/oped/Instant_in_box_intruders+.shtml
- Earthlink wins \$16.4 million spam judgment. Better save that money because a company owning an anti-spam patent has sued them.
http://news.com.com/2100-1032_3-1000272.html?tag=cd_mh
http://news.com.com/2100-1032_3-1000405.html?tag=cd_mh
<http://www.washingtonpost.com/wp-dyn/articles/A29596-2003May8.html>
- California Supreme Court hears oral argument in the case of the former Intel employee's mass email to Intel's current employees.
<http://www.nandotimes.com/technology/story/880158p-6134934c.html> *(free registration required)*

PRIVACY

- Web users can sue company for gathering info about them, such as URL search terms, without the users' consent.
http://news.com.com/2100-1029_3-1001081.html?tag=cd_mh
- California contemplating law that would protect identity of online critics and whistleblowers.
http://news.com.com/2100-1028_3-1000115.html?tag=cd_mh
- Some students don't get much privacy on the Internet.
<http://www.latimes.com/technology/la-me-privacy9may09.1.2347849.story?coll=la%2Dheadlines%2Dtechnology>
(free registration required)

BIOTECH ISSUES

- First genetic based drug for preventing asthma approved by FDA.
<http://www.washingtonpost.com/wp-dyn/articles/A61767-2003May15.html>
- Nanotechnology funding grows.
<http://www.wired.com/news/business/0,1367,58823,00.html>
- The mapping of genetic differences between various groups holds both the promise for better targeting of disease treatment and the danger of increased ethnic stereotyping.
<http://www.technologyreview.com/articles/rotman0603.asp>
- Bush Administration to sue WTO to end ban on biotech crops in Europe.
<http://www.washingtonpost.com/wp-dyn/articles/A47197-2003May12.html>

DOMAIN NAMES

- The “.pro” registry is now in the middle of a sunrise "defensive" registration period for trademark owners who had nationally registered marks as of September 30, 2002. Defensive registrations can be used to keep others from registering your name as a “.pro” domain name.
<http://www.registrypro.com/pressroom/newsdisplay.php?release=2003-04-23>
- “.kids.us,” the domain for kid-friendly ventures, is set to launch in September. Is there any significance in the fact the kid-targeted and professional-targeted domains are launching at about the same time, long after everyone else? Hmm.
<http://www.reuters.com/newsArticle.jhtml?storyID=2732713>
- Doesn't "news" by definition need to be "new"? Domain names no longer selling for big bucks.
<http://www.wired.com/news/business/0,1367,58763,00.html>

PATENTS

- Patent fight breaks out over who owns rights to the SARS virus.
<http://www.washingtonpost.com/wp-dyn/articles/A57444-2003May14.html>
- Uh oh. Patent holder must give alleged infringer claim interpretation info in patent litigation discovery. The court reasoned that such information is needed to prove case and that it is therefore not protected by privilege.
<http://www.law.com/jsp/printerfriendly.jsp?c=LawArticle&t=PrinterFriendlyArticle&cid=1051121837932>
- Use of third-party to perform step of method patent does not prevent infringement liability.
<http://ipcenter.bna.com/pic2/ip.nsf/id/BNAP-5M9QM7?OpenDocument>

TRADEMARKS

- Placing competitor's trademark in metatags was not fair use, says Ninth Circuit.
<http://caselaw.lp.findlaw.com/data2/circs/9th/0156733p.pdf>
- Chutzpah. It turns out that Smucker's "Simply 100 Percent Fruit" is actually only 50% fruit, according to a new suit filed with the FDA.
<http://www.bayarea.com/mld/mercurynews/business/5853054.htm>
- The Door is still open. Former Doors' band members may use the DOORS name on their current tour, at least for now.
<http://www.bayarea.com/mld/mercurynews/news/local/5847493.htm>
- It's a mad, mad, mad, MADD world. MADD (Mothers Against Drunk Driving) has sued DAMMADD (Dads and Mad Moms against Drug Dealers) for trademark infringement.
<http://www.newsday.com/news/local/wire/ny-bc-ny--madd-lawsuit0512may12,0,2522714.story?coll=ny-ap-regional-wire>

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